

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

<b>ALLAH a/k/a KEVIN KERR,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No. CIV-07-562-HE</b>
	)	
<b>JOE KEFFER, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**REPORT AND RECOMMENDATION**

Plaintiff, a prisoner appearing *pro se*, brings this action pursuant to 42 U.S.C. § 1983, alleging a violation of his constitutional rights. United States District Joe Heaton has referred the matter to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. §636(b)(1)(B). For the reasons set forth herein, the undersigned recommends that the complaint be dismissed without prejudice due to Plaintiff's failure to pay the filing fee.

By order of this Court dated May 16, 2007, Plaintiff was required to pay an initial partial filing fee in the amount of \$34.00 as calculated pursuant to 28 U.S.C. § 1915(b)(1) on or before June 6, 2007. Plaintiff was advised that failure to pay the initial partial filing fee or show cause in writing for his failure to do so, could result in dismissal of this action without prejudice to refiling.

A review of the court file reveals that Plaintiff has not paid the initial partial filing fee, requested an extension of time or shown cause for his failure to do so. Therefore, the undersigned recommends that this action be dismissed without prejudice. Local Civil Rule 3.4(b); *Cosby v. Meadors*, 351 F.3d 1324, 1326-33 (10<sup>th</sup> Cir. 2003) (upholding

dismissal of civil rights complaint based on noncompliance with orders requiring installments on the filing fee or to show cause for the failure to pay).

**RECOMMENDATION**

Accordingly, because Plaintiff has neither paid the partial filing fee as ordered by this court nor shown good cause for such failure, it is recommended that this action be dismissed without prejudice to refiling. Plaintiff is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by the 9th day of July, 2007, in accordance with 28 U.S.C. §636 and Local Civil Rule 72.1. Plaintiff is further advised that failure to make timely objection to this Report and Recommendation waives his right to appellate review of both factual and legal issues contained herein. *Moore v. United States*, 950 F.2d 656 (10<sup>th</sup> Cir. 1991).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter.

**ENTERED** this 18th day of June, 2007.

  
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BANA ROBERTS  
UNITED STATES MAGISTRATE JUDGE